

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EMANUEL ENOCH PICKARD-AGUILAR,

Plaintiff,

v.

WASHINGTON STATE EMPLOYMENT
SECURITY DEPARTMENT,

Defendant.

CASE NO. C20-1248 RSM

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter is before the Court on the Report and Recommendation (R&R) of the Honorable United States Magistrate Judge David W. Christel. Dkt. #25. Plaintiff has not objected to the R&R. The Court adopts the R&R in whole and writes only to clarify one portion of the R&R.

One possible reading of the R&R is that to the extent Plaintiff made claims under 42 U.S.C. § 1983 those claims are subject to Washington’s claim filing statute, RCW 4.92.110, and are barred by Plaintiff’s failure to file a claim prior to pursuing this action. *See* Dkt. #25 at 4 (not specifying whether discussion applies to all claims or only to state law claims). The Court does not read the R&R as reaching that conclusion because § 1983 claims are not subject to the claim filing statute. *See Joshua v. Newell*, 871 F.2d 884, 886 (9th Cir. 1989) (“We hold that the Washington notice of claims statute does not apply to section 1983 claims brought in federal

1 court.”). Accordingly, Plaintiff’s failure to comply with the claim filing statute bars only his
2 state law claims and not potential § 1983 claims. Regardless, any § 1983 claims are barred by
3 the Eleventh Amendment for the reasons laid out in the R&R and summary judgment is
4 appropriate on that basis.

5 Having made this clarification and having reviewed the R&R and the remainder of the
6 record, the Court finds and ORDERS:

- 7 1. The Report and Recommendation (Dkt. #25) is ADOPTED.
8 2. Defendants’ Motion for Summary Judgment (Dkt. #18) is GRANTED.
9 3. Plaintiff’s claims are DISMISSED without prejudice.

10 Dated this 13th day of January, 2021.

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13 RICARDO S. MARTINEZ
14 CHIEF UNITED STATES DISTRICT JUDGE
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